

STATE OF MICHIGAN
COURT OF APPEALS

MARY VIRGINIA UYGUR,

Plaintiff/Counter-Defendant-
Appellant,

v

VURAL UYGUR,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

June 8, 2006

No. 258207

Oakland Circuit Court

LC No. 2003-680803-DO

Before: Jansen, P.J., and Neff and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's judgment of divorce and division of the marital estate. We affirm in part, reverse in part, and remand for modification.

At the time of trial, the parties had been married for approximately thirty-two years. They had no children together. Plaintiff was eighty-two years old and defendant was seventy-four years old. Plaintiff was not employed during the marriage. The parties lived comfortably on defendant's salary and bonuses during the time he was employed at Giffels, and on investment income thereafter. The parties maintained marital homes in both Michigan and Florida. The trial court granted defendant substantial assets as separate property, and divided the marital estate in his favor, awarding defendant fifty-five percent and awarding plaintiff forty-five percent.

In a divorce action, the trial court must make findings of fact before making its dispositional rulings. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). We review the trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *McNamara v Horner*, 249 Mich App 177, 182; 642 NW2d 385 (2002). A finding is clearly erroneous if, after reviewing the record, we are left with the definite and firm conviction that a mistake was made. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). If the trial court's findings are upheld, we then decide whether the dispositional ruling was fair and equitable in light of the facts. *Sparks, supra* at 151-152. The ultimate dispositional ruling will be affirmed unless we are left with the firm conviction that it was inequitable. *Id.* In divorce cases, the trial court has the best opportunity to view the demeanor of the witnesses and weigh their credibility. *Stoudemire v Stoudemire*, 248 Mich App 325, 339; 639 NW2d 274

(2001). Thus, we give special deference to the trial court's findings when they are based on witness credibility. *Draggoo, supra* at 429.

I. Stock and Stock Appreciation

Plaintiff first argues that the trial court erred in finding that the appreciation of defendant's company stock during the marriage was his separate property.¹ We disagree.

Unlike marital assets, a party's separate assets generally are not subject to division. *McNamara, supra* at 183. However, the appreciation of a premarital asset during the marriage is subject to division as part of the marital estate unless the appreciation was wholly passive. *Id.* at 184. The trial court found that the Giffels stock appreciation during the marriage was wholly passive and unrelated to defendant's workplace duties because it was the result of stock splits and was not directly tied to defendant's compensation. There is no dispute that the quantity of stock multiplied passively as the result of stock splits and transfers. The principal issue is thus whether the increase in the stock's value was due to active appreciation. The evidence clearly established that the value of the stock continuously rose in a passive manner.

In *Dart v Dart*, 460 Mich 573, 575; 597 NW2d 82 (1999), the defendant had been employed by a large family-controlled company. During the marriage, the parties moved to England, at which time several million dollars were transferred to the defendant from the family trusts. *Id.* at 575-576. The defendant filed for divorce in England, and the divorce was granted by an English court. *Id.* at 576-580. Our Supreme Court found that the English court's treatment of the defendant's interest in the family trusts as a separate asset paralleled Michigan law. Our Supreme Court found that the trust income that defendant received had never become marital property. *Id.* at 585. It noted that although the defendant worked for the corporation during the parties' marriage, he was separately compensated through a salary and bonus. *Id.* at 585. The *Dart* Court concluded that "[t]he Dart fortune and defendant's interest in it exist independently of defendant's workplace activities or the marriage partnership." *Id.*

In the present case, the trial court properly applied the rule of *Dart*.² In concluding that the appreciation of defendant's stock was merely passive, the trial court likened defendant to the

¹ It is undisputed that defendant had acquired eighty-two percent of his total holdings in Giffels stock by the time of marriage. Defendant acquired the remaining eighteen percent of his Giffels stock during the marriage. The trial court correctly determined that defendant was entitled to eighty-two percent of the Giffels stock and its appreciation as separate property, and that the remaining eighteen percent of the Giffels stock and its appreciation was marital in nature. We do not disturb this determination. Therefore, our analysis regarding appreciation is limited to the premarital 82-percent portion of defendant's stock. Because it is undisputed that the remaining eighteen percent is marital property, it follows that the appreciation of that 18-percent portion is marital property as well.

² We disagree with plaintiff's assertion that our Supreme Court's discussion of Michigan property law in *Dart* is merely dicta.

defendant in *Dart*, whose compensation included salaries and bonuses, which were wholly separate from his trust assets. The *Dart* Court did “recognize the possibility that plaintiff might have shown a nexus between defendant’s work at the company and the underlying trust assets,” observing that a sufficiently strong nexus could have led to inclusion of the trust within the marital estate. *Id.* at 585 n 6. According to the *Dart* Court, such a sufficiently strong nexus had existed in *Reeves v Reeves*, 226 Mich App 490; 575 NW2d 1 (1997). *Id.* However, the *Dart* Court went on to note:

Unlike the husband in *Reeves*, *supra*, defendant did not actively manage the trust in question. It was a legal entity separately created by defendant’s father. [*Id.*]

Thus, the *Dart* Court clearly distinguished the facts of that case from those present in *Reeves*,³ determining that there was an insufficient connection between the plaintiff’s work activities and the trust assets to warrant classification of the trust as marital property.

Similar to the facts of *Dart*, and unlike the facts of *Reeves*, defendant in the case at bar did not actively manage his stock while it was appreciating during the marriage. The value of defendant’s stock rose and fell based on the net worth of Giffels. The success of the company, and thus its stock value, rested on all of the company’s employees, of which defendant was only one. Because defendant worked for the company, his performance necessarily affected the company’s success to *some* degree. However, we cannot conclude that defendant’s employment *caused* the stock values to appreciate. Because defendant’s ability to affect the company’s stock value was limited, the nexus between defendant’s employment and the company’s success was necessarily attenuated.

Despite the apparent differences between this case and *Dart*, we are persuaded that the present facts are more analogous to those of *Dart* than to those of *Reeves*. While defendant’s activities surely had *some* impact on the company’s worth, defendant was not directly or even primarily responsible for the company’s stock value. Quite simply, the nexus between defendant’s work at Giffels and the increase in value of defendant’s stock is insufficient to warrant inclusion of the stock appreciation in the parties’ marital estate.

Plaintiff also argues that the appreciation of the stock during the marriage was subject to division based on her own contributions to the marital relationship. A party’s separate property can be subject to division in a divorce if the other party contributed to the acquisition, improvement, or accumulation of the property. MCL 552.401. Plaintiff relies on *Hanaway v Hanaway*, 208 Mich App 278, 294; 527 NW2d 792 (1995), where this Court determined that the

³ In *Reeves*, *supra* at 492, the defendant had complete control and ownership over certain properties acquired before the parties’ marriage. The *Reeves* Court therefore determined that the appreciation in the value of those properties was part of the marital estate. *Id.* at 496. The *Dart* Court held that *Reeves* was distinguishable because the *Dart* defendant “did not actively manage the trust in question.” *Dart*, *supra* at 585 n 6. Defendant in the present case is similarly unlike the defendant in *Reeves* because he did not solely own Giffels or even significantly control the company’s ultimate profitability.

plaintiff's substantial contributions to the marital relationship warranted division of the defendant's separate property. In that case, the plaintiff quit school when the parties married and managed the household physically and financially until late in the 24-year relationship. The plaintiff also cared for the parties' three children born during the marriage. *Id.* at 281. The *Hanaway* Court found that the defendant's stock had appreciated because of defendant's efforts, facilitated by plaintiff's activities at home, concluding:

That plaintiff's contribution to the asset came in the form of household and family services is irrelevant. The marriage was a partnership. The couple nurtured a business and three children, and watched all four grow. [*Id.* at 294]

Here, the trial court found that plaintiff's contributions were wholly unlike the contributions of the plaintiff in *Hanaway*. The trial court found that plaintiff unilaterally quit her job just before the marriage, raised no children during the marriage, enjoyed numerous leisure activities, employed a housekeeper, ate dinners out, spent considerable time in Florida while defendant worked in Michigan, and contributed little to the marital relationship or to the administration of the household. The trial court also found that plaintiff's contributions as a "corporate wife" were minimal. The record plainly supports the trial court's findings.

In this case, the parties had no children during the marriage, they employed a housekeeper at certain times, and plaintiff did not work outside the home. Plaintiff spent a great deal of her time volunteering, golfing, skiing, and traveling, while defendant worked to sustain the parties' lifestyle. The parties dispute the amount of time that each spouse spent in Florida during defendant's years of employment, and further disagree regarding which spouse performed the majority of household tasks in the Florida home. However, the trial court was in a superior position to judge the witnesses' credibility, and we afford great deference to its findings in this regard. *Draggoo, supra* at 429. On the record before us, we cannot conclude that the trial court erred in finding that plaintiff's contributions to the marriage were insufficient to warrant invasion of defendant's separate estate.

In sum, the record supports the trial court's findings that defendant's 82-percent portion of the Giffels stock appreciated passively, and that plaintiff's contributions were insufficient to justify invasion of the asset. The trial court did not clearly err in determining that eighty-two percent of the Giffels stock, including the corresponding appreciation, was defendant's sole and separate property.

II. IRA and Profit-Sharing

Plaintiff next argues that the trial court erred in finding that defendant's profit-sharing plan, which was subsequently rolled into an IRA,⁴ was separate property. She asserts that

⁴ Defendant's 401(k) earnings of \$118,115, earned during the marriage, were rolled into this IRA as well. It is undisputed that the entire 401(k) rollover amount represents marital property. The record shows that the total value of the IRA at the time of divorce was approximately \$931,819.

because the profit-sharing plan was a retirement fund, most of which was earned during the marriage, the majority of the plan constituted a marital asset. We agree.

MCL 552.18(1) provides:

Any rights in and to vested pension, annuity, or retirement benefits, or accumulated contributions in any pension, annuity, or retirement system, payable to or on behalf of a party on account of service credit accrued by the party during marriage shall be considered part of the marital estate subject to award by the court under this chapter.

Defendant argues that there was no evidence that the profit-sharing plan was a retirement fund. However, the record reveals that Giffels considered the profit-sharing plan to be a retirement benefit for its employees. Moreover, Giffels recognized the applicability of the Employee Retirement Income Security Act (ERISA), 26 USC 401 *et seq.*, to its profit-sharing plan, further indicating that the plan was a retirement benefit. Finally, defendant does not identify any evidence showing that the profit-sharing plan was not a retirement benefit. We therefore conclude that the trial court clearly erred in finding that all of the profit-sharing monies in the IRA account were defendant's separate property. Because the profit-sharing plan was established before the parties were married, part of it was a premarital asset. However, the remainder was a marital asset, subject to division. MCL 552.18(1).

Pension benefits should generally be allocated based on a ratio of the years the parties were married while the employed spouse earned his pension, to the total years during which the employed spouse worked to accrue the pension. *Pickering v Pickering*, 268 Mich App 1, 8; 706 NW2d 835 (2005). According to this formula, the marital portion of the profit-sharing plan monies in the IRA would be seventy-six percent, based on the nineteen years of marriage between 1972 and 1991, and the twenty-five years of accrued profit-sharing between 1966 and 1991. The value of defendant's profit-sharing account at the time it was rolled over into his IRA account in 1991 was \$474,124. Therefore, \$113,790 of this amount represents defendant's separate property.⁵

Plaintiff argues that because defendant actively managed the IRA after the profit-sharing monies and 401(k) monies were rolled into it, the IRA's appreciation is necessarily marital property. Given that the 401(k) proceeds and \$360,334 of the profit-sharing monies were marital property, the appreciation attributable to those monies is also marital property. Of course, the question remains whether the appreciation attributable to defendant's separate \$113,790 portion of the profit-sharing monies is marital property. We might otherwise be persuaded that the appreciation attributable to this \$113,790 amount constitutes defendant's separate property.

⁵ We are not persuaded by the testimony of plaintiff's expert regarding the plan's premarital value. His calculations ascertained the value of defendant's premarital portion based on the account's 1982 value and the application of an annual growth rate. However, because the value of the account at the time it was rolled over was a known amount, there was no need to calculate the approximate amount in this manner.

However, due to the blended nature of the separate and marital portions of the IRA, we are unable to calculate the specific appreciation attributable to defendant's premarital \$113,790. Therefore, we classify as marital property the entire appreciation of the IRA account. *McNamara, supra* at 184-185. Although defendant is entitled to take \$113,790 as a premarital asset, the balance of the IRA, including all appreciation, must be divided as marital property.

The trial court clearly erred when it classified the entirety of defendant's profit-sharing monies as separate property. While \$113,790 of the IRA is defendant's separate property, the balance of the \$931,819 IRA, including all appreciation, is to be included in the marital estate. The trial court shall amend the judgment of divorce to (1) grant \$113,790 from the IRA to defendant as separate property, and (2) divide the remainder of the \$931,819 IRA between the parties. Although the trial court purported to divide the marital estate on a 55/45 basis, the parties agree that the actual division was roughly equal.⁶ Therefore, the IRA balance shall be equally divided between the parties on a 50/50 basis.

III. Commingling of Funds

Plaintiff contends that defendant's stock proceeds and the appreciation of those proceeds became marital property because they were placed in certain investment accounts, and funds from those accounts were used indirectly for marital purposes. There is no dispute that most of defendant's stock proceeds were deposited into Raymond James investment accounts. Nor is there any dispute that some of the monies were subsequently withdrawn from the Raymond James investment accounts, transferred into other joint accounts, and used for marital purposes.

Plaintiff cites *Polate v Polate*, 331 Mich 652, 653-655; 50 NW2d 190 (1951), for the proposition that otherwise separate property may become marital property if it is commingled with marital monies or placed in joint marital accounts. We agree that under *Polate*, this Court may include separate assets in the marital estate if they are commingled with an intent to create marital property. However, in making any assessment under *Polate*, the intent of the parties necessarily controls. In other words, separate property will not be reclassified as marital property pursuant to *Polate* unless it is clear that the parties intended to make the separate property part of the marital estate.

Here, no such intent is evident. We agree with the trial court that defendant's stock proceeds were not commingled, but were kept sufficiently separate. The record establishes that the parties paid the majority of their marital expenses from certain non-investment bank accounts, while defendant kept his stock proceeds separate in the Raymond James investment accounts. The record further shows that plaintiff never directly utilized the funds in the investment accounts. Conversely, the evidence demonstrates that defendant alone controlled withdrawals from the investment accounts and transfers of investment-account monies into the other marital accounts. The record further shows that defendant intended in all ways to keep his stock proceeds segregated from the remainder of the marital assets. In short, although the

⁶ Both parties' counsel stated to this Court at the time of oral argument that the division of marital property was nearly equal despite the trial court's purported 55/45 split.

evidence indicates that some of the investment-account funds may have been transferred into other accounts and then used for joint purposes, we cannot say that the trial court clearly erred in concluding that defendant intended his premarital property in the investment accounts to retain its separate character.

IV. Miscellaneous Error

Plaintiff asserts that the trial court erred in using the amount of \$2,935,588.20, the gross pre-tax value of defendant's stock, in dividing the stock proceeds into an 82-percent premarital portion and an 18-percent marital portion. Plaintiff argues that by not using the after-tax value, the trial court effectively distributed monies that were no longer part of the estate. We agree.

Here, the taxes on the stock proceeds had already been paid, and the amount of the stock proceeds had decreased from \$2,935,588.20, to the after-tax value of approximately \$1,901,782. Because the taxes had already been paid, and the after-tax value of the stock proceeds was therefore known to all parties, we conclude that the trial court clearly erred in basing its calculations on the pre-tax value. As noted, eighty-two percent of the stock proceeds were defendant's separate property, and eighteen percent of the stock proceeds were marital property. Therefore, the trial court shall modify the judgment of divorce and redistribute the stock proceeds on the basis of their after-tax value. The modified judgment of divorce shall include a provision awarding defendant eighty-two percent of the after-tax value, and shall include a provision dividing the remaining eighteen percent between the parties.

Plaintiff also asserts that the trial court "erred in classifying the Lincoln National Life annuity as [defendant's] separate property" However, plaintiff does not mention the annuity in her statement of questions presented, and fails to put forth any argument addressing this matter. Therefore, this argument is abandoned on appeal.⁷ *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).

Plaintiff next contends that the trial court clearly erred in finding that the estate was valued at \$5 million dollars. Plaintiff relies on the trial court's statement that "[a]lthough the [c]ourt finds [d]efendant to have over one million dollars in separate property in this five million dollar estate, the marital portion was equitably divided." Although the estate did not total \$5 million dollars by either party's calculation, the trial court's misstatement did not affect the outcome of this case. The property division was not based on this incorrect \$5 million dollar figure, but rather on the individual assets and their corresponding values. It appears that the trial court was merely attempting to emphasize the sheer size of the estate rather than to specify a particular total value.

Plaintiff further claims that the trial court erred in failing to consider her argument that defendant dissipated \$531,000 in marital funds. It is generally true that when one party has

⁷ We further note that the trial court awarded defendant the annuity simply as part of the value of his premarital stock proceeds. The annuity was not awarded in addition to defendant's other separate assets.

dissipated marital property, the value of the dissipated assets may be included in calculating the marital estate. See 2 Michigan Family Law, Property Division, § 15.21. However, we cannot conclude on the record before us that defendant dissipated \$531,000 as claimed by plaintiff. Defendant testified that the \$531,000 was specifically used for attorney fees, household maintenance and utilities, real estate improvements, the purchase of two Cadillacs, country club memberships, association dues, travel expenses, medical expenses, and taxes. Plaintiff did not directly counter this testimony with evidence of her own, but merely asserted that the monies must have been dissipated because they could not be accounted for. Although the trial court did not specifically decide this issue, it is clear from the judgment of divorce that the court did not believe that defendant had dissipated the funds. The trial court was in the best position to hear defendant's testimony regarding these funds and to view his demeanor. *Stoudemire, supra* at 339. Moreover, a trial court's conclusions necessarily include findings with respect to witness credibility. See e.g. *Aiello v National-Ben Franklin Fire Ins Co*, 79 A2d 758, 759 (R.I., 1951). In light of defendant's testimony regarding these funds and the trial court's superior position to view the evidence, we cannot conclude that the trial court clearly erred in failing to specifically find that \$531,000 was dissipated by defendant.

V. Equitable Distribution

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara, supra* at 188. As noted, we will affirm the trial court's dispositional ruling unless we are left with the firm conviction that it was inequitable. *Sparks, supra* at 151-152. The division need not be mathematically equal, but any significant departure from congruence must be explained. *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past conduct of the parties, and any other equitable considerations. *Sparks, supra* at 158-160. The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight. *Id.* at 158-159.

Although the relative values of the assets to be divided will change upon remand, we address this issue in the context of the trial court's determination that defendant should receive fifty-five percent of the marital property and that plaintiff should receive forty-five percent. We disagree with plaintiff's assertion that the trial court's percentage division of the marital assets was inequitable. The law does not require that marital property be divided *equally*. *Gates, supra* at 423. It only requires that it be divided *equitably*. *McNamara, supra* at 188.

Plaintiff argues that an equal division of the marital estate was mandated by the facts presented in this case, particularly the length of the marriage, the ages of the parties, her deteriorating health, the equal contributions of the parties to the marital estate, and the parties' conduct. The trial court found that the parties had been married for thirty-two years, which was not disputed. It did not state whether this factor weighed in favor of either party. Regarding the parties' ages, the trial court found that this factor weighed equally. The trial court made no specific finding as to the health of the parties, indicating that it did not find this factor to be particularly relevant. *Sparks, supra* at 159.

The trial court found that defendant had made all significant financial contributions to the marriage, but noted that it had not focused on which party contributed any specific asset. Rather, the court found that this factor weighed in favor of defendant because plaintiff spent the years of marriage traveling, golfing, skiing, and secluding herself into a separate bedroom while defendant worked to build the marital estate. Further, when discussing plaintiff's contributions, the trial court found that plaintiff's household contributions were minimal. These findings are supported by the record. Both parties presented testimony regarding the parties' contributions to the marriage. It is clear from the trial court's opinion that it found defendant to be more credible. We give great deference to the trial court's findings when they are based on witness credibility. *Draggoo, supra* at 429. The court did not err in determining that this factor favored defendant.

Finally, the trial court found that conduct of the parties weighed in favor of defendant, stating that "[p]laintiff's patterns of deceit and avarice throughout the parties' 32-year marriage shone through her paper-thin allegations of [d]efendant's cruelty." Both parties portrayed the other as cold and uncaring. Again, the trial court found defendant to be more credible. Given the evidence presented and the trial court's superior position to judge the witnesses' credibility, we cannot conclude that the trial court clearly erred in finding that this factor favored defendant.

Having upheld the trial court's findings, we must determine whether the division was equitable. *Sparks, supra* at 151-152. Notwithstanding the trial court's purported 55/45 split, the parties agree that plaintiff actually received more than forty-five percent of the assets. At oral argument before this Court, both parties' attorneys conceded that the trial court's division of the marital estate was roughly equal. Given the trial court's decision that many factors weighed equally, but that some favored defendant, we are not left with the firm conviction that it was inequitable for the trial court to divide the marital property slightly in favor of defendant. *Id.*

VI. Spousal Support

Finally, plaintiff argues that the trial court erred in declining to award her spousal support. We disagree. Whether to award spousal support is in the trial court's discretion, and we review the trial court's decision for an abuse of discretion. *Gates, supra* at 432. "The trial court's decision regarding spousal support must be affirmed unless we are firmly convinced that it was inequitable." *Id.* at 433. The trial court's factual findings are reviewed for clear error, but those findings are presumptively correct. *Olson v Olson*, 256 Mich App 619, 629; 671 NW2d 64 (2003).

The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party, and alimony is to be based on what is just and reasonable under the circumstances. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Among the factors that should be considered are:

- (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on

a party's financial status, and (14) general principles of equity. [*Olson, supra* at 631.]

The trial court specifically considered these factors and denied plaintiff's request for spousal support. The trial court concluded:

Considering the amount of money each will receive, their social security benefits, age, health, and needs of the parties, the [c]ourt finds that the totality of the circumstances leaves the parties with substantial assets to maintain their standard of living without further support.

We cannot say that this finding was clearly erroneous. Particularly in light of the fact that plaintiff will receive substantially greater assets upon modification of the judgment of divorce, we are not convinced that the trial court's decision to deny spousal support in this case was inequitable.⁸ *Gates, supra* at 433.

VII. Conclusion

Pursuant to MCR 7.216(1) and (7), we instruct the trial court to modify the final judgment of divorce in the following respects. The trial court shall grant \$113,790 from the IRA to defendant as his sole and separate property, and shall divide the remaining balance of the \$931,819 IRA between the parties on an equal 50/50 basis.⁹

The trial court shall also modify the final judgment of divorce by redistributing the stock proceeds on the basis of their after-tax value. The court shall award defendant as separate property eighty-two percent of the after-tax stock value, and shall divide the remaining eighteen percent of the after-tax stock value between the parties. In all other respects the trial court's final judgment of divorce shall remain unchanged.

Affirmed in part, reversed in part, and remanded for modification of the judgment of divorce consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Janet T. Neff

/s/ Brian K. Zahra

⁸ We recognize, as stated by plaintiff's counsel at oral argument, that plaintiff's health has apparently deteriorated since the trial in this matter. However, as noted, plaintiff will receive substantially greater assets upon modification of the judgment of divorce.

⁹ Defendant's 401(k), which was rolled into the IRA, is also included in this \$931,819 amount. The trial court originally offset the marital 401(k) with \$118,155 from defendant's separate estate. Because the entire remaining balance of the IRA, including the 401(k) monies, will be divided on remand, defendant shall receive credit toward his separate estate in the amount of \$118,155.